IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Chapter VIII 32(2)(b)
Description of Case

Date of decision: 19.12.2006

Criminal Misc. App. No. 1034 of 2006

A.F.R. (Approved for reporting)
Not approved for Reporting

(Initial of Judge)

dated: 19.12.2006

Note: Bench Reader will attach this at the top of first page of the judgment when it is put up before the Judge for signature.

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Criminal Misc. App. No. 1034 of 2006

1. Amar Pandey
2. Jagdish Pandey
   Both S/o Shri Virendra Pandey
   R/o Sugar Mill, Bazpur
   Udham Singh Nagar. ……...Applicants

Versus

1. State of Uttaranchal,
2. Central Bureau of Investigation
   through Superintendent of Police
   SCR-1 N.Delhi-11
3. Raj Kumar, S/o Shri Ram Kumar
   R/o Harijan Colony, Sugar Mill
   Bazpur, District Udham Singh Nagar

……..Respondents.

Shri L.P. Naithani, Sr. Advocate, assisted by Shri Vipul Sharma, learned counsel for the applicants.
Shri G.S. Sandhu, learned A.G.A. for the State.
Shri U.K. Uniyal, learned counsel for the respondent No. 2.
Shri Lalit Sharma, learned counsel for respondent No.3.

Hon'ble Prafulla C. Pant, J.

By means of this petitioner, moved under Section 482 of Code of Criminal Procedure, 1973, the petitioners Amar Pandey and Jagdish Pandey, have sought quashing of the charge sheet No. 143 of 2006 relating to offence punishable under Sections 147, 148, 149, 302 I.P.C. and one relating to offence punishable under section 3(1) (X) of Schedule Castes Schedule Tribes (Prevention of Atrocities) Act, 1989. The said two petitioners are accused in the charge sheet.

2. It appears that in respect of an incident dated 07.04.2006, a First Information Report was lodged with the police station Bazpur (as is clear from the copy of First

Information Report) relating to offence punishable under Sections 147, 148, 149, 302 I.P.C. and that of one punishable under Section 3(1) (X) of Schedule Castes Schedule Tribes (prevention of Atrocities) Act, 1989. A crime No. 1309 of 2006, was registered at said police station against five accused persons namely Arvind Pandey, Amar Pandey, Jagdish Pandey, Vikas Pandey and Jai Prakash. Regular police after investigation submitted the impugned charge sheet against accused Amar Pandey and Jagdish Pandey (petitioners) only, who are facing trial before the learned Sessions Judge, Udham Singh Nagar in Sessions Trial No. 149 of 2006.

3. Learned counsel for the applicants, argued that Central Bureau of Investigation has started investigating the crime on the request of State Government. Copy of the First Information Report with Central Bureau of Investigation is annexed as Annexure-4 to the petition. Said investigation appears to have been stated after the impugned charge sheet was filed against the present petitioners. Learned counsel for the petitioners argued that the Sessions Judge, Udham Singh Nagar, cannot proceed with trial in view of the investigation pending with C.B.I. However, he filed to show me any provision of law, which bars the learned Sessions Judge to proceed with the trial in respect of the petitioners against whom regular police has already submitted charge sheet before the C.B.I. registered the case to investigate the crime. Had there been no charge sheet filed by regular police, the regular police and C.B.I. being entrusted with the same, this Court could have directed only one agency to

investigate the crime. But in the present case, as against the present petitioners, the charge sheet has already been filed and the trial is already on. There is no provision in the Code of Criminal Procedure, 1973 under which it can be said that the regular court had no jurisdiction to proceed with the trial. As such, this Court is not inclined to interfere with the trial of the present petitioners by the regular court.

4. Learned counsel for the petitioners argued that there may be conflicting findings or conclusion by the two different courts after the C.B.I. submits the charge sheet in the matter. It is needless to say that a person cannot be tried again in respect of the same offence. As to the trial of present petitioners, which is already on, they cannot be tried in respect of the same offence twice. But at present their trial cannot be said to be vitiated, as there is no other charge sheet pending against there petitioners. It is pertinent to mention here that sub-section (8) of Section 173 of Code of Criminal Procedure, 1973, provides that nothing in the Section shall be deemed to preclude further investigation in respect of an offence if a report under sub-section (2), has been forwarded to the court.

5. Therefore, the petition moved under Section 482 of Cr.P.C. is dismissed.

(Prafulla C. Pant, J.)

Dt. 19.12.2006

Sweta